

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

PHILIP CHARVAT, individually and on behalf
of a class of all persons and entities similarly
situated,

Plaintiff,

v.

VESTRA ENERGY, INC. and SEAN GROVE,

Defendants.

TOMORROW ENERGY CORP., a Nevada
corporation,

Cross-Claimant,

v.

VESTRA ENERGY, INC., a Wyoming
corporation, and SEAN GROVE, an individual,

Cross-Defendants.

NO. 2:20-cv-01064-ALM-KAJ

Chief Judge Algenon L. Marbley

Magistrate Judge Kimberly A. Jolson

**PLAINTIFF'S UNOPPOSED
MOTION TO EXTEND THE CLASS CERTIFICATION DEADLINE**

Plaintiff respectfully requests that the Court extend the class certification deadline to May 20, 2020. In the alternative, Plaintiff respectfully requests that the Court allow for the class certification filing to occur 30 days following the May mediation. Although the parties have engaged in written discovery, Vestra completed its production just two weeks ago. As a result, Plaintiff has not deposed Vestra, which is necessary for Plaintiff to gain a complete understanding of call records produced. Only then will Plaintiff be able to assess the need for an expert to review and opine as to those records and write his class certification motion. The

Plaintiff has conferred with counsel for the defendants and cross-claimant, who do not oppose the relief requested in this motion.¹

Accordingly, Plaintiff respectfully requests that the Court enter a scheduling order with the following schedule:

EVENT	DATE
Plaintiff's motion for class certification due	Within 30 days following the May Mediation and no later than June 29, 2021
Defendant's response to Plaintiff's motion for class certification due	21 days following the filing
Plaintiff's reply due	14 days following the opposition
Hearing on class certification	To be set by the Court

I. STATEMENT OF FACTS

Plaintiff filed this proposed class action lawsuit on February 27, 2020. (Dkt. # 1). Plaintiff alleged initially that Tomorrow Energy was responsible for prerecorded calls to two residential phone numbers in violation of the TCPA. On July 13, 2020, Plaintiff amended his complaint to add Vestra. (Dkt. # 23). Specifically, Plaintiff alleged that "Vestra Energy, Inc., with the knowledge and acceptance of Tomorrow Energy, generated [] leads by making prerecorded telemarketing calls to Mr. Charvat's residential telephone number, which is prohibited by the TCPA." (*Id.* ¶ 2). Plaintiff also added Vestra's principal, Sean Grove, as a party. (*Id.*) Tomorrow Energy, in turn, assert a cross claim against Vestra and Grove. (Dkt. #34).

Vestra and Grove have denied all allegations. (Dkt. ##40-41). The Court initially established February 19, 2021 as the deadline to move for class certification. (Dkt. #20). On

¹ By assenting to the relief requested in this motion, Vestra does not concede that the Plaintiff's claim should be able to continue, as it has a pending motion to dismiss.

November 16, 2020, Plaintiff moved to extend the class certification deadline (among other deadlines) to May 21, 2021 due to a series of COVID-19-related extensions Vestra requested. (Dkt. #45). Vestra agreed to Plaintiff's request, but Tomorrow Energy opposed any extension. (Dkt. #46). The Court agreed to extend the motion for class certification, but only to April 5, 2021, not to May 21, 2021 as Plaintiff requested. (Dkt. #47).

Since then, Plaintiff has settled his dispute with Tomorrow Energy (Dkt. #76), but his dispute with Vestra and Grove remains. That remaining claim against Vestra and Grove has been the subject of an ongoing discovery dispute over which the Court has presided. (Dkt. #59) And Vestra has since changed counsel. (Dkt. ##61, 63, 64, 65, 74, 79, 81). The Court ordered the parties to address their disputes at mediation in May 2021. (Dkt. ##85, 91). Most recently, the Court ordered the parties "to meet and confer regarding the scheduling of Defendant's deposition and to file a joint status report" by April 16, 2021. (Dkt. #97).

Plaintiff reached out to Vestra and Tomorrow Energy seeking their consent before bringing this motion, and after discussion, both parties consented to the relief sought in this motion.

II. AUTHORITY

The Court's local rules authorize the Court "to modify scheduling orders" and "provide for an early hearing on any motion with or without the filing of memoranda by the parties" upon a showing of "good cause." LCR 16.2; LCR 7.1(b)(3).

The current deadline for Plaintiff to file his class certification motion is April 5, 2021. Although Plaintiff has diligently sought the discovery necessary for his class certification motion, Vestra completed its production just two weeks ago. As a result, Plaintiff has not deposed Vestra, which is necessary for Plaintiff to gain a complete understanding of call records produced. Plaintiff needs time to meet and confer with Vestra regarding the scheduling of its deposition. The Court has set an April 16, 2021 deadline by which the parties must do so. Only then will Plaintiff be able to assess the need for an expert to review and opine as to those records and write his class certification motion.

Plaintiff has proposed a reasonable schedule that allows the parties to complete class certification discovery.

III. CONCLUSION

For all the above reasons, Plaintiff respectfully requests that his motion be granted and the Court order the following schedule:

EVENT	DATE
Plaintiff's motion for class certification due	Within 30 days following the May Mediation and no later than June 29, 2021
Defendant's response to Plaintiff's motion for class certification due	21 days following the filing
Plaintiff's reply due	14 days following the opposition
Hearing on class certification	To be set by the Court

RESPECTFULLY SUBMITTED AND DATED this 5th day of April, 2021.

By: /s/ Anthony I. Paronich, Admitted Pro Hac Vice

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CERTIFICATE OF SERVICE

I, Anthony I Paronich, hereby certify that on April 5, 2021, I electronically transmitted the foregoing to the following:

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DATED this 5th day of April, 2021.

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